IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11069 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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BABLU VIKAS YADAV

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 11069 of 2003

MR AMRISH K PANDYA for Petitioner No. 1

MS KRISHNA U MISHRA for Petitioner No. 1

MR RM CHAUHAN Ld. AGP for Respondent No. 1-3

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/10/2003

ORAL JUDGEMENT

By way of this special civil application, the petitioner has challenged the order of detention passed

against him by the Police Commissioner, Surat on 10.5.2003 under the exercise of powers under sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "the PASA Act" for short).

The grounds served upon the petitioner and placed on record reveal that the detaining authority relied upon two crimes registered against the petitioner on 22.3.2003 under sec. 394, 399 and 120B of IPC and under sec. 135 of BP Act. The detaining authority also relied upon the statements as recorded in-camera by the sponsoring authority on 22.4.2003 and verified by the detaining authority on 7.5.2003 revealing the incidents of 9.2.2003 and 16.3.2003. Both these incidents are unreported to the police. From the above material, the petitioner was declared as 'dangerous person' and the order impugned came to be passed against the petitioner.

Heard ld. advocate Mr. Pandya for Ms. KU Mishra for the petitioner and ld. AGP Mr. RM Chauhan for the respondents.

Out of various grounds raised on behalf of the petitioner and controverted by ld. AGP from the rival contention, it appears that the matter can be disposed of on the ground whether the detaining authority took into consideration the vital aspect of the matter. The grounds placed on record clearly reveal that the petitioner was in judicial custody in both the above said crimes registered against him. The detaining authority came to the conclusion that at any time the petitioner was likely to be released on bail and was likely to continue his illegal activity. Ld. advocate for the petitioner makes a statement that up till now, the petitioner has not moved any bail application and till today, he is under judicial custody in the above said two crimes. Now, the question is whether there was any material before the detaining authority to reach to the subjective satisfaction that the petitioner was likely to be released on bail. On going through the record and the grounds, it clearly transpires that there was no material before the detaining authority to reach to subjective satisfaction that the petitioner was likely to be released on bail and was likely to continue his illegal activity. Therefore, the facts of this case is squarely covered by a decision of the Apex Court in the matter of Amrutlal and others vs. Union Government through Secretary, Ministry of Finance and others, as reported in AIR 2000 SC 3675. The order impugned is required to be quashed and set aside on this ground alone.

In the result, this special civil application is allowed. The order impugned in this special civil application passed on 10.5.2003 by the Police Commissioner, Surat city under the PASA Act against the petitioner is quashed and set aside. The petitioner is directed to be set at liberty forthwith, if he is not required to be detained in jail for any other purpose. Rule made absolute with no order as to costs.

(J.R. VORA, J.)

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